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Law Department

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MAR 11 1991

Federal Communications Commission
Office of the Secretary

93-1991

RM-7610 ✓

Re: Matter Of Request For Rulemaking Setting Standards
For Aviation Receivers (RM 7610)

Dear Ms. Searcy:

March 8, 1991

Enclosed for filing, on behalf of CBS Inc., are an original and four (4) copies of COMMENTS in the above-referenced rulemaking docket.

Please address communications concerning this matter to the undersigned at (212) 975-7419 or Howard F. Jaeckel, Esq., Associate General Counsel (212) 975-4595.

Very truly yours,

Andrew J. Siegel
Broadcast Counsel

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Enclosures

3+4

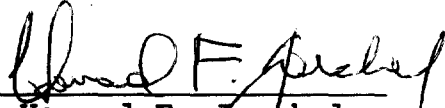
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CBS recently filed Comments in a Federal Aviation Administration proceeding concerning potential electromagnetic interference to air navigation by broadcast stations*** (copy enclosed). In that docket, CBS noted that the FAA's drastic proposals were misguided precisely because they failed to consider improvements to air navigation devices, such as increased shielding of aviation receivers, as a remedy for any potential interference.

As the government agency charged with regulating the broadcast spectrum and in light of its expressed interest in the subject, the Commission should reexamine the benefits of improvements to air navigation devices, such as increasing the shielding of aviation receivers, as a means to eliminate potential interference. Accordingly, CBS supports the Petition for Rulemaking.

Respectfully submitted,

CBS INC.

By 
Howard F. Jaeckel

By 
Andrew J. Siegel

Its Attorneys

51 West 52 Street
New York, New York 10019

March 8, 1991

*** In The Matter Of Amendments To Part 77 of the Federal Aviation Administration's Rules, FAA Docket No. 26305, filed December 31, 1990.

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MAR 11 1991

Before the
Federal Aviation Administration
WASHINGTON, D.C. 20554

Federal Communications Commission
Office of the Secretary

In The Matter Of Amendments To)
Part 77 of the Federal Aviation)
Administration's Rules) Docket No. 26305

COMMENTS OF CBS INC.

CBS Inc. ("CBS") respectfully submits these comments for consideration by the Federal Aviation Administration ("FAA") pursuant to a Notice of Proposed Rulemaking ("Notice") published in the Federal Register on August 3, 1990 (55 FR 31722 et seq.) in the above captioned proceeding.

BACKGROUND

The Notice proposes amendments to Part 77 of the FAA's Rules regarding objects affecting navigable airspace. These amendments seek to prevent broadcast facilities from allegedly causing electromagnetic interference ("EMI") to air navigation devices by effectively broadening the scope of the FAA's jurisdiction. The proposed amendments:

- require notice to the FAA of the construction or alteration of all radio stations which: i) have antennas with an operating frequency above 30 MHz; ii) have effective radiated power above 10 kW and; iii) are physically located below airport imaginary surfaces; and
- reduce the time period during which a Determination of No Hazard remains effective.

CBS, the licensee of 19 radio stations and five television stations, opposes these proposals. The FAA has provided no evidence, scientific or anecdotal, that broadcast

facilities cause EMI to air navigation devices nor any reason sufficient to warrant the blunderbuss approach set forth in the Notice, especially in light of the existence of certain less-restrictive alternatives. In addition, the FAA has provided no basis for encroaching upon the regulatory purview of the agency charged by Congress with spectrum management, the Federal Communications Commission ("FCC").

THE PROPOSED AMENDMENTS

The FAA's proposal that it review the construction or alteration of radio stations with operating frequencies above 30 MHz, effective radiated power above 10 kW and physical locations below airport imaginary surfaces would bring under FAA jurisdiction:

"...those proposed installations whose proposed heights would not penetrate physical obstruction standards, but whose location could likely* present possible EMI problems." 55 FR 31726;

and

"... changes in the authorized frequency or effective radiated power of a transmitting station within 3,000 feet of an air navigation or communication aid, construction of new FM or VHF-TV stations on existing antenna towers (side-mounting), and any alteration of existing FM and VHF-TV stations including height, frequency, and power." Id.

In other words, under the proposed regulation, many more changes to broadcast facilities would require both FAA and FCC approval, instead of just FCC approval, as is now

* "Could likely" appears to be oxymoronic. Presumably, the FAA has another standard animating its thinking -- but it has failed to reveal that thinking in the Notice. See e.g. page 6.

required. A new and significant burden would be placed on broadcast applicants. No justification has been offered for the imposition of so heavy a burden on broadcasters.

Additionally, the Notice proposes to alter the effective period of a Determination of No Hazard for broadcast towers. Currently, a Determination of No Hazard is effective until the date prescribed (by the FCC) for completion of the construction (14 C.F.R. §77.39(e)), which includes any extensions granted by the FCC. In the Notice, the FAA proposes that the expiration date of the Determination of No Hazard be the last day of the initial construction period prescribed by the FCC, notwithstanding any FCC extensions. Even if the FCC granted an extension, an applicant would additionally need to apply for an extension of the Determination from the FAA. This gives the FAA and any third parties an opportunity to revisit an already granted determination. Yet the FAA fails to demonstrate any resultant benefit or provide any reason for this change. This proposal would also interfere with the FCC's statutory mandate to insure the timely provision of broadcasting service to all communities.

Also, the Notice proposes the elimination of the FAA's rules concerning antenna farms (multiple tower sites and multiple antenna on a single tower). While a statement is made that "the interference and related complications generated from antennae in proximity to each other tend to

make antenna farms infeasible" (55 FR 31729), no evidence of any studies or anecdotes buttress this assertion. The Notice indicates, however, that the proposed construction of a limited number of antennae in close proximity will now be considered in the aeronautical study process and even encouraged. Accordingly, CBS presumes that the FAA will not use the elimination of its antenna farm rules to ban antenna farms outright.

PRIOR PROCEEDINGS

The FCC examined the subject of EMI from broadcast facilities affecting air navigation in a 1985 Notice of Proposed Rulemaking, MM Docket 85-108, 50 FR 19392 (May 8, 1985) ("NPRM"). The NPRM expressly balanced the rights and responsibilities of both the broadcast and air navigation services, attempting to strike a balance suitable for both. NPRM at ¶61. The FCC concluded in the NPRM that of any broadcast service, only the FM band (88 MHz -- 108 MHz) posed any potential hazard to air navigation. The FCC found that television frequencies (54 MHz -- 88 MHz, 175 MHz -- 806 MHz) were far removed from air navigation frequencies (108 MHz -- 137 MHz) and had different interference characteristics than FM, so that television frequencies would not interfere with air navigation. Therefore, the FCC limited its discussion of protection criteria to the FM band. Id. at ¶34.*

* Similarly, AM frequencies (0.5 MHz -- 1.6 MHz) and International frequencies (2 MHz -- 27 MHz) are also far removed from air navigation frequencies.

The NPRM examined FAA and other publications and cited an FAA publication* which it held "encapsulated the essence of the problem -- the susceptibility of aviation receivers" Id. at ¶11. It also cited several other studies, by such organizations as the International Civil Aeronautics Organization, the Radio Technical Commission on Aeronautics ("RTCA") and the International Radio Consultative Committee which reported similar findings. Id. at ¶12. Moreover, these studies found that not all aviation receivers were experiencing a problem -- only the poorer quality receivers. The RTCA proposed steps to combat this problem, including warnings to the aviation community about the possibility of interference, encouraging receiver and aircraft antenna improvement and continuing coordination between the FAA and the FCC. Id. at ¶13. The FCC proposed the use of "low cost add-on filters", then at an estimated cost of approximately \$300 per aircraft radio. Id. at ¶33. In addition, the NPRM recognized that serious interference potentially threatened air safety and proposed that station licensees be required to immediately remedy any harmful interference upon notice from the FCC by either reducing power, ceasing operation or otherwise eliminating the problem. Id. at ¶60.

* Sawtelle and Dong, Interference in Communications and Navigation Avionics from Commercial FM Stations, FAA Report No. 78-35 (July 1978)

The FCC terminated its proceeding (104 F.C.C.2d 410, 60 R.R.2d 1278 (April 11, 1986)) because the relatively small number of responses (7 comments and 5 replies) "did not provide enough substantive information from which final rules could be adopted." Id. at ¶2, but retained the comments for future review, noting that the FCC would continue to be interested in this subject.

DISCUSSION

The proposals set forth by the FAA do not exhibit the balance sought by the FCC. They are radical solutions where less extreme answers exist. The Notice fails to consider the extent to which potential EMI could be eliminated by increased shielding around air navigation devices or by other improvements to air navigation devices, as recommended by the FCC's NPRM.

Initially, the Administrative Procedure Act ("APA") requires that an agency disclose the "thinking that has animated the form of a proposed rule and the data upon which that rule is based." Home Box Office, Inc. v. F.C.C., 567 F.2d 9, 35 (D.C. Cir. 1977); 5 U.S.C. §553(b)(3). Nonetheless, the FAA has failed to supply to the public what data, if any, its far-reaching proposals are based upon.

Similarly, the APA requires that an agency must consider all relevant factors and demonstrate a "rational connection between the facts found and the choice made

[citation omitted]" *Id.* The FCC, after reviewing numerous studies in its NPRM on this subject, tentatively concluded that shielding of air navigation devices was the rational solution to this potential hazard. The FAA, without citing to any study, tentatively concludes that much more drastic measures are required, including encroaching upon the FCC's jurisdiction, without providing any basis for disagreeing with the FCC or providing a "rational connection" between its choice and any facts.

Moreover, in light of the absence of scientific evidence supporting the Notice, the Notice fails to demonstrate why the FAA's current efforts, along with those presently provided by the FCC, are insufficient. Nor does the Notice explain why increased coordination between the FAA and the FCC, either on a regular or case by case basis, would not solve any EMI problem. This is an egregious oversight in light of Congress' expressed will that the FAA "efficiently coordinate [with the FCC] the receipt, consideration of and action upon, such applications and the completion of associated aeronautical studies (emphasis added)."^{*} Inasmuch as the FCC concluded that only the high end of the FM band could potentially cause interference to air navigation devices, the FAA also fails

^{*} 49 U.S.C. §1501(c) (the 1987 amendments to the Federal Aviation Act)

to explain why its rules are not limited to FM facilities. By including TV facilities, the proposed regulations would appear to be quite overbroad.

CBS supports a carefully considered approach to potential EMI problems, balancing both the needs of broadcasters and the needs of air navigation device users. CBS believes, however, that the public interest in air transportation safety can be protected without needlessly inhibiting the expansion of broadcast services by generating unnecessary "red tape" and its attendant cost, which would be the result of the FAA's proposals. Rules which would handicap broadcasters in favor of air navigation devices, without any showing of necessity, are not balanced and should not be adopted.

CONCLUSION

While the FAA is the agency charged with safeguarding the navigable airspace, its jurisdiction over EMI should be subordinate to the FCC. To the extent that the proposals herein usurp the FCC's jurisdiction over EMI, without providing any rational basis, they should not be enacted.

Respectfully submitted,
CBS, INC.

By /s/Richard H. Altabef
Richard H. Altabef

By /s/Michael Rose
Michael Rose

By /s/Andrew J. Siegel
Andrew J. Siegel

Its Attorneys

51 West 52 Street
New York, New York 10019

December 31, 1990

CERTIFICATE OF SERVICE

I, Debbie Santelli, hereby certify that I have caused to be served by first class mail, postage prepaid, this 8th day of March, 1991, a copy of the foregoing Comments of CBS Inc. in support of the Petition of John Furr & Associates, Inc. for Rulemaking (RM-7610) to the following:

John R. Furr
President
John Furr & Associates, Inc.
2700 Northeast Loop 410
Suite 325
San Antonio, TX 78217

Debbie Santelli
Debbie Santelli